



November 1, 2007
UP File #2472-11

Nebraska Public Service Commission
1200 N Street, Suite 300
Lincoln, Nebraska 68509-4927

Re: Public Comment Nebraska Public Service Commission Proposed
Amendment of Title 291, Chapter 7, Transmission Lines Rules and Regulations
Rule and Regulation No. 170

Dear Commissioners:

This letter is in response to your Order dated August 28, 2007. This Order solicited public comment on the amending of Title 291, Chapter 7, Transmission Lines Rules and Regulations, to adopt rules regarding wires crossing railroad tracks at public highway crossings.

UP believes that the amendments proposed will inject the Public Service Commission ("PSC") into regulating the negotiations between the utilities and the railroads unnecessarily. To require that the utility notify the PSC within five (5) days of submitting a request to a railroad for negotiation inserts the PSC into the process on all agreements, which would seem unnecessary given that, in most cases, voluntary agreements are reached. To require that even an agreement reached by negotiation be submitted to the PSC for approval creates an unnecessary burden for the utilities, the railroads and the PSC (given that the PSC would be required to review every single agreement involving a transmission line or a wireline crossing a railroad at a public crossing).

Union Pacific (UP) has 90,000 active agreements permitting crossing our rights of way with power and communication lines in 23 states. We have in place some 4,227 active power and telecommunication agreements covering crossings in the State of Nebraska; though we are not readily able to determine which of these are public crossings, it is fair to assume that many are at public crossings. Almost all of these were negotiated individually by the parties without the need for regulation and, although we sometimes debate price and terms, we have always been able to reach resolution.

A communications or utility company already has the right to petition the PSC if it cannot reach agreement with a railroad, pursuant to Neb. Rev. Stat. §§ 75-702 to 75-724. In addition to these statutory rights, many utility companies have the power of eminent

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Union Pacific Comments on Amendment of Title 291, Chapter 7

Rule and Regulation No. 170

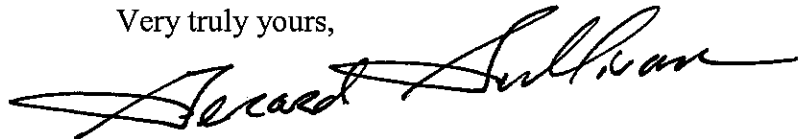
domain, which may be exercised if an agreement with a railroad cannot be reached on mutually acceptable terms - and in Nebraska an eminent domain action is an expedited process for the utility companies that have this power.

The traditional interest of the PSC in regulating crossings has been safety issues, and the PSC would only get involved if petitioned by one of the parties. Many of the disputes over these agreements involve issues of engineering, which can far more effectively be resolved between the experts working for the utilities and the railroad [with reference to Federal safety regulations and the recommendations of the American Railway Engineering and Maintenance-of-Way Association ("AREMA") guidelines], rather than injecting a third party into the discussions.

It is UP's understanding that some of the parties commenting may advocate that Nebraska adopt regulations similar to those adopted in Iowa in 2003. Although UP participated in the drafting of the Iowa regulations, they were very much a compromise, and UP believes that these regulations conflict with Federal railroad safety law in several respects. As an example, the Iowa regulations exempt the utility from obtaining a right of entry from the railroad, in spite of the fact that railroads are strictly required to regulate the safety of the right of way by Federal law, and subject to substantial fines for non-compliance. Having suffered a derailment in Iowa in 2001 due to defective directional drilling by a pipeline company, this is a major concern to UP, as any boring under railroad track has the potential to destabilize the railbed. We believe the time honored system of rights of entry best protects the public, the railroad employees and our customers.

UP would be happy to participate in further discussions on this issue to try to get to the root of the problems which apparently are being experienced in some parts of the state, but we urge the PSC not to adopt the proposed amendments to Title 291, Chapter 7, as these proposed amendments will only create an additional burden on all parties, including the PSC.

Very truly yours,

A handwritten signature in black ink, appearing to read "Gerard Sullivan", written in a cursive style.

Gerard Sullivan
General Attorney